***THE HON'BLE SRI JUSTICE P.S.NARAYANA**

+Writ Petition No.20110 of 2007

% 4-10-2007

K. Sabita .. Petitioner

And

$ The Assistant Provident Fund Commissioner,
Enforcement Circle-I Employees P.F. Organization,
Regional office at 3-4-763,
Bhavishyanidhi Bhavan, Barkatpura,
Hyderabad and another ..
Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri V.Raja Gopal Reddy

^ Counsel for respondents : Sri R.N. Reddy

?CASES REFERRED :

NIL

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.20110 of 2007

Date: 4th October, 2007

Between :-

K. Sabita .. Petitioner

And

The Assistant Provident Fund Commissioner,
Enforcement Circle-I Employees P.F. Organization,
Regional office at 3-4-763,
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THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.20110 of 2007

ORDER:-

This Court issued *notice before admission* on 21-9-2007.

2. Sri R.N.Reddy had taken notice and requested time to file counter affidavit. Counter affidavit is filed to the limited extent of stating the availability of an effective

alternative remedy and reserving the right to file counter affidavit in detail, if necessary.

3. Sri V.Raja Gopal Reddy, the learned Counsel representing the petitioner had taken this Court through the contents of the impugned order and would maintain that subsequent thereto on 16-4-2007 a letter was addressed to the Recovery Officer along with the documents and in view of the same, inasmuch as, the copy of the Gift Deed, Ownership Certificate and the details of loan sanctioned by the State Bank of Hyderabad had been furnished, the same to be considered, again by the 2nd respondent while making the order. The learned Counsel also had taken this Court through certain directions issued in W.P.No.4943/2007 on 12-3-2007. The learned Counsel also had drawn the attention of this Court to Rule 10 of Schedule II of the Income Tax Act, 1961. Further reliance was placed on Section 8(b) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter in short relief to as 'the Act' for the purpose of convenience).

4. Per contra, Sri R.N.Reddy, the learned Counsel representing respondents had taken this Court through the contents of the counter affidavit and would maintain that in pursuance of the directions issued by this Court,

when objections are filed, no material had been placed and hence the 2nd respondent – the Recovery Officer is justified in making the order impugned in the present Writ Petition. The learned Counsel also had drawn the attention of this Court to Section 8(g) of the Act and further would maintain that in the light of Rule 11 (6) of Schedule II of the Income Tax Act, 1961, the writ petitioner is having a remedy by way of suit. Even otherwise, the Counsel would submit that when the material had not been produced before the 2nd respondent – the Recovery Officer, prior to the making of the order and along with objections, the mere fact that long thereafter on 16-4-2007, a representation was made, would not alter the situation in any way. The learned Counsel also would make it clear that the counter affidavit is being filed to the limited extent of raising an objection relating to the maintainability of the Writ Petition in the light of the facts and circumstances of this case.

5. The Writ Petition is filed for a Writ of Mandamus declaring that the proceedings of the 2nd respondent in No.AP/38218/RR.Cell-I/Rc.No.71/2005 dt.5-4-2007 as illegal, arbitrary and contrary to directions of this Hon'ble Court and consequently to set aside the said impugned proceedings against the petitioner and to pass such other

suitable orders.

6. It is stated that *the 2nd respondent herein issued proclamation of sale No.AP/38218/R.Cell/Rc.No.57/2004 & 71/2005, dt.6-2-2007, wherein it was mentioned that the authorized officer of the Employees Provident Fund has forwarded the Certificate No.57/2004 and 71/2005, dt.31-1-2007 for the recovery of the sum of Rs.10,55,251/- from M/s.PHRM Degree College, Mahaboobnagar, and it was mentioned that the date of sale of the properties i.e., open plot in Sy.No.105/2 and Plot No.1 in Sy.No.105/F, admeasuring 170 sq.yds., at Marlu, Mahaboobnagar, which property was proposed to be sold on 16-3-2007 as a recovery proceedings to recover the amount payable to the organization as stated above. It is also stated that the father of the petitioner K.Ramachandracharya who was the former Principal and Secretary of P.H.R.M.Degree College, Mahaboobnagar in reply to a notice of demand it was stated that the father of the petitioner was only an employee and he was served with all the notices and demands from the Provident Fund's Office and that he made it clear that personally and officially he was not part of the management of the PHRM Degree College, any more nor he has any share in the assets and liabilities of the institution and he was acting only under the directions*

of the Management. It is further stated that the father of the petitioner made it clear that the earlier management has transferred the institution with assets and liabilities to one G.S.Educational society and the transferee society has undertaken the management and forced the father of the petitioner to resign for the post of Principal and removed him from the service and that he made it clear that the present management is responsible for the payments of the dues if any and further he also made clear that the present management G.S.Educational Society, Mahaboobnagar, represented by its Secretary Mr.Ram Prasad has forcibly taken the document of this property and other documents from the table drawers of the petitioner's father. It is further stated that by ignoring the representation of the father of the petitioner Sri K.Ramachandracharya stated above, dt.16-3-2006, the impugned proceedings of proclamation of sale were issued by the 2nd respondent seeking recovery of the amount by selling the properties in open plot in Sy.No.105/2 and Plot No.1 in Sy.No.105/E 170 sq.Yards at Marlu, Mahaboobnagar, stating that the property belongs to Smt.K.Aruna, W/o.Sri K.Ramachandrachary and hence the said proclamation of sale is void and illegal. It is also further averred by the petitioner that her

mother Smt.K.Aruna, W/o.Sri K.Ramachandrachrya executed a Gift Settlement Deed in favour of the petitioner on 2-9-2005 wherein her mother categorically stated that the schedule property i.e., building and a daba roof, plinth area 245.41 Sq.ft. situated in an open area of an extent of 412 sq.yards wherein RCC sheds were constructed described as schedule property was conveyed to the petitioner by virtue of the Gift Settlement Deed and it was stated that in the Gift Settlement Deed that the Donor Smt.K.Aruna got the schedule property by virtue of the Gift Settlement Deed No.2493/2004 and that a building was constructed therein and that therefore, the above property was conveyed to the petitioner by virtue of the Gift Settlement Deed executed by her mother Smt.K.Aruna in favour of the petitioner and the property was also delivered to the petitioner alone has got lawful title and possession of the schedule property. Further it is stated that as the above said property was conveyed to the petitioner by her mother Smt. K.Aruna by virtue of the Gift Settlement Deed dt.2-9-2005 subsequent to that date Smt.K.Aruna ceased to be the absolute owner and possessor of the schedule property, wherein the building is located in which building the new management was running the P.H.R.M.Degree College, Mahaboobnagar. It is also stated that consequently as the donor Smt.K.Aruna

ceased to be the owner, selling the schedule property by virtue of the proclamation of sale describing it as the property belonging to Smt.K.Aruna, W/o.Sri K.Ramachandracharya on the ground that the new management of the P.H.R.M.Degree College, Mahaboobnagar was due an amount of Rs.10,55,250/- as arrears of Provident Fund due to the organization. It is also further averred by the petitioner in para 8 that as the building and the open site belong to the petitioner as absolute owner and possessor by virtue of the Gift Settlement Deed executed in her favour by her mother Smt.K.Aruna even on 2-9-2005 and soon after as donor Smt.K.Aruna ceased to be the owner and possessor of the property, the said property is neither liable for attachment nor sale under the proclamation of sale for the alleged arrears of amount due from the new management of P.H.R.M.Degree College, Mahaboobnagar with which the petitioner is no way concerned and the petitioner is also not liable under the proclamation of sale of impugned notice by the respondents 1 and 2. It is further stated that either the petitioner or her mother Smt.K.Aruna or her father Sri K.Ramachadracharya are no way concerned with the alleged liability under the impugned notice of proclamation of sale dt.6-2-2007 and consequently the

property if any, is not liable for attachment and sale for such liability of the new management of PHRM Degree College, Mahaboobnagar and hence the impugned notice is unsustainable, void and illegal and that consequently, the petitioner filed a Writ Petition No.4943/2007 praying this Court to declare that the impugned proceedings by which the property covered by the proclamation of sale dated 6-2-2007 was invalid, void and unsustainable and this Court was pleased to dispose of the said Writ Petition on 12-3-2007 with a direction that the petitioner is at liberty to lodge objections/claims before the 2nd respondent within 2 weeks from the date of the order and on such objections being filed, the 2nd respondent shall consider the same and record a considered and reasoned order on the claims/objections of the petitioner and also directed the 2nd respondent not to dispose of the properties till communication of the order. It is further stated that in pursuance of the directions of this Hon'ble Court, the petitioner submitted her claims/objections before the 2nd respondent and the 2nd respondent erroneously observed that as Smt.K.Aruna is one of the members of the old society and consequently even though the old establishment is transferred to new establishment i.e., Gnana Saraswathi Educational Society, the liability will not

be relinquished by the old society. It is also stated that as the old society is transferred to the new society all the liabilities of the old society are also simultaneously transferred to the new society and consequently if any dues are in existence, it is the new society which has to discharge but not by the member Smt.K.Aruna of the old society and hence the Recovery Officer canot proceed to recover the same from Smt.K.Aruna, member of the old society. It is further stated that inspite of Sri K.Ramachandracharya, a member of the old society, informed that original documents were with the new society, the observation of the 2nd respondent that the property cannot be transferred by Smt.K.Aruna to her daughter through gift is not valid and not at all correct, because Smt.K.Aruna got title to the property and she can transfer the title to any person, by way of any document, and that the property is not liable for attachment of sale. It is also stated that the 2nd respondent did not give reasonable opportunity to produce the documents of gift before him and he did not verify the same from the Sub-Registrar, Mahaboobnagar. It is further stated that the petitioner after passing the impugned order, submitted a review application and the respondents even did not consider the review application nor given any notice of

enquiry into the matter nor passed any orders on the review application. It is also stated that the respondents did not take any decision inspite of submission of the review application by the petitioner long ago. It is further averred that in view of the above reasons, 5 2nd respondent even without considering any of the objections and without properly considering the material available before the 2nd respondent and also without giving any reasons whatsoever for the objections submitted by the petitioner, the 2nd respondent herein issued proceedings No.AP/38218/RR.Cell-I/Rc.No.71/2005 dt.5-4-2007 wherein the 2nd respondent without considering any of the objections and without reasons ignored the objections and held that the claims/objections made by the petitioner are not sustainable. It is further averred that the 2nd respondent did not afford a reasonable opportunity to the petitioner to place relevant further material evidence before the 2nd respondent and hastily only for the statistical purpose disposed of and rejected the petitioner's objections without considering the same.

7. In the counter affidavit filed specific stand had been taken that *in the earlier round of litigation, the petitioner was directed by this Court in W.P.No.4943/2007 to file her*

objections before the 2nd respondent as per Rule 11 of Schedule II of the Income Tax Act since the same is made applicable to the recoveries of the Provident Fund as per provision in Section 8(G) of the Act and accordingly the petitioner filed objections and the same were considered by the 2nd respondent and made the impugned order. Further specific stand is taken that if the petitioner is aggrieved of the impugned order, the petitioner has a right to institute a suit in a competent Civil Court to establish her right as per the provision in Sub-Rule (6) of Rule 11 of Schedule II of the Income Tax Act, 1961.

8. In W.P.No.4943/2007 by order dt.12-3-2007 while disposing of the Writ Petition, the learned Judge observed that "*under the aforesaid circumstances, the Writ Petition is disposed of granting liability to the petitioner to lodge objections/claims before the 2nd respondent within a period of two weeks from today. On such objections being lodged within the aforesaid period, the 2nd respondent shall consider the same, record a considered decision and shall pass a reasoned order on the claims or objections lodged by the petitioner. The decision of the 2nd respondent shall be communicated to the petitioner by*

Registered Post with Acknowledgement Due. Till such communication, the 2nd shall not proceed to dispose of the properties."

9. The order impugned in Writ Petition dt.5-4-2007 in No.AP/38218/RR.Cell-I/Rc.No.71/2005 reads as hereunder:-

OFFICE OF THE RECOVERY OFFICER
EMPLOYEES PROVIDENT FUND ORGANISATION
3-4-763, Bhavishyanidhi Bhawan, Barkatpura, Hyderabad.

No.AP/38218/RR.Cell-I/Rc.No.71/2005 Dated: 05-04-2007

To
Ms/Smt. K.Sabita,
D/o.K.Ramachandracharya,
H.No.10-36/1, Marlu Veedhi,
Christianpalli village and mandal,
Mahaboobnagar District.

Sir,

Sub:-Employees Provident Fund and Miscellaneous Provisions Act, 1952 / M/s.PHRM Degree College (AP/38218) – Recovery of Arrears – reg.

-: o0o :-

Please refer to your letter dt.31-3-2007 in response to the directions of Hon'ble High Court of A.P., in W.P.No.4943/2007 dt.12-3-2007.

The objections raised by you have been examined in the light of the EPF & MP Act, 1952. The objections can not sustain on the following grounds:

M/s.PHRM Degree College, Mahaboobnagar, is a Covered Establishment having Code No.AP/38218. The Establishment is in due of Rs.10,55,251/- during the period

01/1995 to 12/2003. During the said period, the College was managed by M/s.Pallerla Hanumantha Rao Memorial Educational Society.

Smt. K.Aruna, W/o.K.Ramachandracharya is one of the Member in the said Society. Though the Establishment is transferred to M/s.Gnana Saraswathi Educational Society, the liability will not be relinquished by the old Society for the period for which dues were assessed. The Recovery Officer shall proceed to recover the dues under Section 8B of the Act by one or more methods, namely attachment and sale, arrest of the employer, appointing a Receiver.

Further, Sri K.Ramachadracharya, one of the Member of the earlier Society and Head of your family vide letter, dt.16-3-2006, informed to this office that the original documents were with the new Society towards guarantee of payment. It is not clear that when the original documents are made available with new Society, how the property is transferred to her daughter through gift. The property so transferred to her daughter by Smt.K.Aruna, can be attached for realization of dues through sale.

Moreover, while filing objection, the copies of documents, in respect of execution of gift were not produced to verify the fact with Sub-Registrar, Mahaboobnagar.

The act of issuing proclamation of sale of property is within the provision of the Act.

Hence the objection made by you is not sustainable.

Yours faithfully,
Sd/-
Recovery Officer.

It is no doubt true that some material is placed before this Court to the effect that on 16-4-2007, to the 2nd respondent – Recovery Officer, a representation was

made and in the enclosures it is shown as copy of gift deed, ownership certificate, details of the loan sanctioned by the S.B.H. On the strength of this representation, certain submissions were made by the Counsel representing the writ petitioner. Section 8 of the Act deals with ***Mode of recovery of moneys due from employers***. Section 8B dealing with ***Issue of certificate to the Recovery Officer*** reads as hereunder:-

> *(1) Where any amount is in arrear under Section 8, the authorized officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the establishment or, as the case may be, the employer by one or more of the modes mentioned below:*
>
> *(a) attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer;*
>
> *(b) arrest of the employer and his detention in prison;*
>
> *(c) appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer:*
>
> *Provided that the attachment and sale of any property under this Section shall first be effect against the properties of the establishment and where such attachment and sale is insufficient*

for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.

(2) The authorized officer may issue a certificate under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

Section 8G of the Act on which reliance was placed deals with ***Application of certain provisions of Income-tax Act*** and the same reads as hereunder:-

"*The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, shall apply with necessary modifications as if the said provisions and the rules referred to the arrears of the amount mentioned in Section 8 of this Act instead of to the Income-tax:*

Provided that any reference in the said provisions and the rules to the 'assessee' shall be construed as a reference to an employer as defined in this Act.

Rule 10 of Schedule II of Income-Tax Act, 1961 dealing with ***Property exempt from attachment*** reads as hereunder:-

(1) All such property as is by the Code of Civil

procedure, 1908 (5 of 1908) exempted from attachment and sale in execution of a decree of a civil Court shall be exempt from attachment and sale under this Schedule.

(2) The Tax Recovery Officer's decision as to what property is so entitled to exemption shall be conclusive.

Section 11 of the said Rules deals with ***Investigation by Tax Recovery Officer***. It is needless to say that the same is made applicable by virtue of Section 8G of the Act aforesaid. Rule 11 96) of the Income-Tax Act, 1961 reads as hereunder:-

> *"Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive."*

10. In the light of the facts which had been narrated in the affidavit filed in support of the Writ Petition and also in the light of the nature of the impugned order, inasmuch as, when objections were filed, the opportunity given to the writ petitioner to produce the material had not been availed and it appears subsequent thereto some representation was made. It is not as though the Tax Recovery Officer had not followed the fair procedure. The writ petitioner cannot be permitted to take advantage of

her own wrong in not producing the documents at the relevant point of time and making a representation at the subsequent point of time and requesting for further opportunity, in the considered opinion of this Court may not be justified. This Court is thoroughly satisfied that reasonable opportunity was given to raise objections. Apart from this aspect of the matter, the petitioner is having an effective alternative remedy, if the petitioner is aggrieved of the impugned order by invoking Rule 11 (6) of the Rules referred to supra. In the light of the same, liberty is given to the writ petitioner to invoke the appropriate remedy, if the writ petitioner is so advised. The Writ Petition is disposed of accordingly. No order as to costs.

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Justice P.S.Narayana

4th October, 2007

Note: L.R.Copy to be marked (YES/NO)

smr